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中华人民共和国中外合资经营企业法实施条例 (2014 修订)

(1983 年 9 月 20 日国务院发布 根据 1986 年 1 月 15 日国务院《关于〈中华人民共和国中外合资经营企业法实施条例〉第一百条的修订》第一次修订 根据 1987 年 12 月 21 日《国务院关于修订〈中华人民共和国中外合资经营企业法实施条例〉第八十条第三款的通知》第二次修订 根据 2001 年 7 月 22 日《国务院关于修改〈中华人民共和国中外合资经营企业法实施条例〉的决定》第三次修订 根据 2011 年 1 月 8 日《国务院关于废止和修改部分行政法规的决定》第四次修订 根据 2014 年 2 月 19 日《国务院关于废止和修改部分行政法规的决定》第五次修订)

第一章 总 则

第一条

为了便于《中华人民共和国中外合资经营企业法》(以下简称《中外合资经营企业法》)的顺利实施,制定本条例。

第二条

Regulations for the Implementation of the Law of the People's Republic of China on Sino-foreign Equity Joint Ventures

Chapter 1 General Principles

Article 1 These Regulations are formulated in order to facilitate the implementation of the Law of the People's Republic of China on Sino-foreign Equity Joint Ventures (hereinafter referred to as the Law on Sino-foreign Joint Ventures).

Article 2 Sino-foreign equity joint ventures (hereinafter referred to as joint ventures) established within China's territory in accordance with the Law on Sino-foreign Joint Ventures are

依照《中外合资经营企业法》批准在中国境内设立的中外合资经营企业 (以下简称合营企业) 是中国的法人,受中国法律的管辖和保护。

Chinese legal persons and are subject to the jurisdiction and protection of the Chinese law.

第三条

在中国境内设立的合营企业,应当能够促进中国经济的发展和科学技术水平的提高,有利于社会主义现代化建设。

Article 3 Joint ventures established within China's territory must be able to promote the development of China's economy and the improvement of the science and technology for the benefit of socialist modernization.

国家鼓励、允许、限制或者禁止设立合营企业的行业,按照国家指导外商投资方向的规定及外商投资产业指导目录执行。

Businesses and industries in which the establishment of joint ventures is encouraged, prohibited or restricted by the State shall be decided in accordance with provisions of the State in the Regulations on Foreign Investment Guidelines and the Guideline Catalogue of Foreign Investment Industries.

第四条

申请设立合营企业有下列情况之一的, 不予批准:

Article 4 Applications to establish joint ventures shall not be granted approval if the project involves any of the following conditions:

- (一) 有损中国主权的;
- (二) 违反中国法律的;
- (三) 不符合中国国民经济发展要求的;
- (四) 造成环境污染的;
- (五) 签订的协议、合同、章程显属不公平,损害合营一方权益的。

- (1) Detriment to China's sovereignty;
- (2) Violation of the Chinese law;
- (3) Nonconformity with the requirements of the development of China's national economy;
- (4) Environmental pollution;
- (5) Obvious inequity in the agreements, contracts and articles of association signed, impairing the rights and interests of one party.

第五条

在中国法律、法规和合营企业协议、合同、章程规定的范围内,合营企业有权自主地进行经营管

Article 5 A joint venture has the right to do business independently within the scope of the provisions of Chinese laws, administrative regulations, and the agreement, contract and articles of association of the joint venture. The relevant departments and authorities concerned shall provide support and assistance.

理。各有关部门应当给予支持和帮助。

第二章 设立与登记

第六条

在中国境内设立合营企业,必须经中华人民共和国对外贸易经济合作部(以下简称对外贸易经济合作部)审查批准。批准后,由对外贸易经济合作部发给批准证书。

凡具备下列条件的,国务院授权省、自治区、直辖市人民政府或者国务院有关部门审批:

(一) 投资总额在国务院规定的投资审批权限以内,中国合营者的资金来源已经落实;

(二) 不需要国家增拨原材料,不影响燃料、动力、交通运输、外贸出口配额等方面的全国平衡的。

依照前款批准设立的合营企业,应当报对外贸易经济合作部备案。

对外贸易经济合作部和国务院授权的省、自治区、直辖市人民政府或者国务院有关部门,以下统称审批机构。

第七条

申请设立合营企业,由中外合营者共同向审批机构报送下列文件:

Chapter 2 Establishment and Registration

Article 6 The establishment of a joint venture in China shall be subject to examination and approval by the Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China (hereinafter referred to as MOFTEC). After approval, a certificate of approval shall be issued by MOFTEC.

The State Council shall delegate to the people's governments in provinces, autonomous regions and centrally administered municipalities and relevant departments under the State Council the power to examine and approve the establishment of joint ventures which meet the following conditions:

(1) The total amount of investment is within the limit of the investment examination and approval power as stipulated by the State Council, and the source of capital of the Chinese parties has been ascertained;

(2) No additional allocations of raw materials by the State are required and the national balance of fuel, power, transportation and foreign trade export quotas, etc. is not affected.

Joint ventures established in accordance with provisions of the preceding paragraph shall be reported to MOFTEC for the record.

MOFTEC and the State Council authorized people's governments in provinces, autonomous regions and centrally administered municipalities and relevant departments under the State Council shall hereinafter be referred to as the examination and approval authority.

Article 7 When applying for establishing a joint venture, the foreign and Chinese parties shall jointly submit the following documents to the examination and approval authority:

(1) An application for the establishment of a joint venture;

(2) The feasibility study report jointly prepared by the parties to

- (一) 设立合营企业的申请书;
- (二) 合营各方共同编制的可行性研究报告;
- (三) 由合营各方授权代表签署的合营企业协议、合同和章程;
- (四) 由合营各方委派的合营企业董事长、副董事长、董事人选名单;
- (五) 审批机构规定的其他文件。
- 前款所列文件必须用中文书写, 其中第(二)、(三)、(四)项文件可以同时用合营各方商定的一种外文书写。两种文字书写的文件具有同等效力。
- 审批机构发现报送的文件有不当之处的, 应当要求限期修改。

the joint venture;

(3) Joint venture agreement, contract and articles of association signed by representatives authorized by the parties to the venture;

(4) List of candidates for chairperson, vice-chairperson and directors nominated by the parties to the venture; and

(5) Other documents required by the examination and approval authority.

The documents listed in the proceeding paragraph shall be written in Chinese. Documents (2), (3) and (4) may be written simultaneously in a foreign language agreed upon by the parties to the joint venture. Both versions shall have equal validity.

Where any contents are found to be inappropriate in the submitted documents, the examination and approval authority shall demand an amendment to it within a limited time.

第八条

审批机构自接到本条例第七条规定的全部文件之日起, 3个月内决定批准或者不批准。

Article 8 Upon receipt of all the documents stipulated in Article 7 of these Regulations, the examination and approval authority shall, within three (3) months, decide whether to approve or disapprove them.

第九条

申请者应当自收到批准证书之日起1个月内, 按照国家有关规定, 向工商行政管理机关(以下简称登记管理机构)办理登记手续。合营企业的营业执照签发日期, 即为该合营企业的成立日期。

Article 9 The applicant shall, within one (1) month after receipt of the certificate of approval, carry out registration procedures with the administrative authority of industry and commerce (hereinafter referred to as the registration administration organ). The date on which the business license of a joint venture is issued shall be regarded as the date of formal establishment of the joint venture.

第十条

Article 10 The "joint venture agreement" mentioned in these

本条例所称合营企业协议,是指合营各方对设立合营企业的某些要点和原则达成一致意见而订立的文件;所称合营企业合同,是指合营各方为设立合营企业就相互权利、义务关系达成一致意见而订立的文件;所称合营企业章程,是指按照合营企业合同规定的原则,经合营各方一致同意,规定合营企业的宗旨、组织原则和经营管理方法等事项的文件。

合营企业协议与合营企业合同有抵触时,以合营企业合同为准。

经合营各方同意,也可以不订立合营企业协议而只订立合营企业合同、章程。

第十一条

合营企业合同应当包括下列主要内容:

(一) 合营各方的名称、注册国家、法定地址和法定代表人的姓名、职务、国籍;

(二) 合营企业名称、法定地址、宗旨、经营范围和规模;

(三) 合营企业的投资总额,注册资本,合营各方的出资额、出资比例、出资方式、出资的缴付期限以及出资额欠缴、股权转让的规定;

(四) 合营各方利润分配和

Regulations refers to a document agreed upon by the parties to the joint venture on some main points and principles governing the establishment of a joint venture; "joint venture contract" refers to a document agreed upon and concluded by the parties to the joint venture on their rights and obligations; "articles of association" refers to a document agreed upon by the parties to the joint venture defining the purposes, organizational principles and method of management of a joint venture in compliance with the principles of the joint venture contract.

If the joint venture agreement conflicts with the contract, the contract shall prevail.

If the parties to the joint venture agree to sign only a contract and articles of association, the agreement may be omitted.

Article 11 The joint venture contract shall include the following main items:

(1) The names, the countries of registration, the legal addresses of parties to the joint venture, and the names, professions and nationalities of the legal representatives thereof;

(2) Name of the joint venture, its legal address, purpose and the scope and scale of business;

(3) Total amount of investment and registered capital of the joint venture, investment contributed by the parties to the joint venture, each party's investment proportion, forms of investment, the time limit for contributing investment, stipulations concerning incomplete contributions, and assignment of investment;

(4) The ratio of profit distribution and losses to be borne by each party;

(5) The composition of the board of directors, the distribution of the number of directors, and the responsibilities, powers and means of employment of the general manager, deputy general manager and other senior management personnel;

(6) The main production equipment and technology to be

亏损分担的比例;	adopted and their source of supply;
(五) 合营企业董事会的组成、董事名额的分配以及总经理、副总经理及其他高级管理人员的职责、权限和聘用办法;	(7) The ways and means of purchasing raw materials and selling finished products;
(六) 采用的主要生产设备、生产技术及其来源;	(8) Principles governing the handling of finance, accounting and auditing;
(七) 原材料购买和产品销售方式;	(9) Stipulations concerning labor management, wages, welfare and labor insurance;
(八) 财务、会计、审计的处理原则;	(10) The duration of the joint venture, its dissolution and the procedure for liquidation;
(九) 有关劳动管理、工资、福利、劳动保险等事项的规定;	(11) The liabilities for breach of contract;
(十) 合营企业期限、解散及清算程序;	(12) Ways and procedures for settling disputes between the parties to the joint venture;
(十一) 违反合同的责任;	(13) The language used for the contract and the conditions for putting the contract into effect.
(十二) 解决合营各方之间争议的方式和程序;	The annex to the contract of a joint venture shall have equal validity with the contract itself.
(十三) 合同文本采用的文字和合同生效的条件。	

合营企业合同的附件, 与合营企业合同具有同等效力。

第十二条

合营企业合同的订立、效力、解释、执行及其争议的解决, 均应当适用中国的法律。

Article 12 The formation of a joint venture contract, its validity, interpretation, execution and the settlement of disputes under it shall be governed by the Chinese law.

第十三条

合营企业章程应当包括下列

Article 13 Articles of association shall include the following main items:

主要内容：

(一) 合营企业名称及法定地址；

(二) 合营企业的宗旨、经营范围和合营期限；

(三) 合营各方的名称、注册国家、法定地址、法定代表人的姓名、职务、国籍；

(四) 合营企业的投资总额，注册资本，合营各方的出资额、出资比例、出资方式、出资缴付期限、股权转让的规定，利润分配和亏损分担的比例；

(五) 董事会的组成、职权和议事规则，董事的任期，董事长、副董事长的职责；

(六) 管理机构的设置，办事规则，总经理、副总经理及其他高级管理人员的职责和任免方法；

(七) 财务、会计、审计制度的原则；

(八) 解散和清算；

(九) 章程修改的程序。

- (1) The name of the joint venture and its legal address;
- (2) The purpose, business scope and duration of the joint venture;
- (3) The names, the countries of registration and the legal addresses of parties to the joint venture, and the names, professions and nationalities of the legal representatives thereof;
- (4) The total amount of investment and registered capital of the joint venture, capital contribution, investment proportion, method of investment, deadline for contribution payment, provisions on equity transfer, the ratio of profit distribution and losses to be borne by each party to the joint venture;
- (5) The composition of the board of directors, its responsibilities, powers and rules of procedure, the term of office of the directors, and the responsibilities of its chairperson and vice-chairperson;
- (6) The setting up of management organizations, rules for handling routine affairs, the responsibilities of the general manager, deputy general manager and other senior management personnel, and the method of their appointment and dismissal;
- (7) Principles governing finance, accounting and auditing;
- (8) Dissolution and liquidation;
- (9) Procedures for amendment of the articles of association.

第十四条

合营企业协议、合同和章程经审批机构批准后生效，其修改时同。

Article 14 The agreement, contract and articles of association shall come into force after being approved by the examination and approval authority. The same applies in the event of amendments.

第十五条

审批机构和登记管理机构对

Article 15 The examination and approval authority and the registration and administration office are responsible for supervising and inspecting the execution of the joint venture contracts and articles of association.

合营企业合同、章程的执行负有监督检查的责任。

第三章 组织形式与注册资本

Chapter 3 Form of Organization and Registered Capital

第十六条

Article 16 A joint venture is a limited liability company.

合营企业为有限责任公司。

Each party to the joint venture assumes the liability of the joint venture within the limits of the capital subscribed by the party.

合营各方对合营企业的责任以各自认缴的出资额为限。

第十七条

Article 17 The total amount of investment (including loans) of a joint venture refers to the sum of capital construction funds and the circulating funds needed for the joint venture's production scale as stipulated in the contract and the articles of association of the joint venture.

合营企业的投资总额（含企业借款），是指按照合营企业合同、章程规定的生产规模需要投入的基本建设资金和生产流动资金的总和。

第十八条

Article 18 The registered capital of a joint venture is the total capital registered at the registration and administration office for the establishment of the joint venture. It shall be the capital subscribed by all parties to the joint venture.

合营企业的注册资本，是指为设立合营企业在登记管理机构登记的资本总额，应为合营各方认缴的出资额之和。

The registered capital shall generally be expressed in Renminbi, or may be in a foreign currency agreed upon by the parties to the joint venture.

合营企业的注册资本一般应当以人民币表示，也可以用合营各方约定的外币表示。

第十九条

Article 19 A joint venture shall not reduce its registered capital during the term of the joint venture. Where there is a real need for reduction of the registered capital due to changes in the total amount of investment, the scale of production and operation or other circumstances, the reduction shall be approved by the examination and approval authority.

合营企业在合营期内不得减少其注册资本。因投资总额和生产经营规模等发生变化，确需减少的，须经审批机构批准。

第二十条

Article 20 If one party to the joint venture intends to assign all or part of his investment subscribed to a third party, consent shall be obtained from the other parties to the joint venture, and approval from the examination and approval authority is required.

合营一方向第三者转让其全部或者部分股权的，须经合营他方同意，并报审批机构批准，向登记

When one party assigns all or part of his investment to a third

管理机构办理变更登记手续。

合营一方转让其全部或者部分股权时，合营他方有优先购买权。

合营一方向第三者转让股权的条件，不得比向合营他方转让的条件优惠。

违反上述规定的，其转让无效。

第二十一条

合营企业注册资本的增加、减少，应当由董事会会议通过，并报审批机构批准，向登记管理机构办理变更登记手续。

第四章 出资方式

第二十二条

合营者可以用货币出资，也可以用建筑物、厂房、机器设备或者其他物料、工业产权、专有技术、场地使用权等作价出资。以建筑物、厂房、机器设备或者其他物料、工业产权、专有技术作为出资的，其作价由合营各方按照公平合理的原则协商确定，或者聘请合营各方同意的第三者评定。

第二十三条

外国合营者出资的外币，按缴款当日中国人民银行公布的基础汇率折算成人民币或者套算成约定的外币。

中国合营者出资的人民币现

party, the other parties shall have a priority purchase right.

When one party assigns his investment subscribed to a third party, the conditions given shall not be more favorable than those given to the other parties to the joint venture.

No assignment shall have effect should there be any violation of the above stipulations.

Article 21 Any increase or reduction of the registered capital of a joint venture shall be approved by a meeting of the board of directors and submitted to the examination and approval authority for approval. Registration procedures for changes shall be undertaken with the original registration and administration office.

Chapter 4 Means of Contributing Investment

Article 22 Each party to a joint venture may contribute cash or buildings, factory premises, machinery, equipment or other materials, industrial property, proprietary technologies, or site use rights as investment, the value of which shall be ascertained. If the investment is in the form of buildings, factory premises, machinery, equipment or other materials, industrial property or proprietary technologies, the value shall be assessed through consultation by the parties to the joint venture on the basis of fairness and reasonableness, or shall be assessed by a third party agreed upon by parties to the joint venture.

Article 23 The foreign exchange contributed by the foreign party shall be converted into Renminbi according to the standard exchange rate announced by the People's Bank of China on the day of its submission or be cross exchanged into a predetermined foreign currency.

Where the cash Renminbi contributed by the Chinese party is converted into foreign currency, it shall be converted according to the standard exchange rate announced by the People's Bank of China on the day of the submission of the funds.

金, 需要折算成外币的, 按缴款当日中国人民银行公布的基准汇率折算。

第二十四条

作为外国合营者出资的机器设备或者其他物料, 应当是合营企业生产所必需的。

前款所指机器设备或者其他物料的作价, 不得高于同类机器设备或者其他物料当时的国际市场价格。

Article 24 The machinery, equipment and other materials contributed by the foreign party shall be those necessary for the production of the joint venture.

The price of the machinery, equipment and other materials referred in the preceding paragraph shall not be higher than the current international market price for similar equipment or materials.

第二十五条

作为外国合营者出资的工业产权或者专有技术, 必须符合下列条件之一:

(一) 能显著改进现有产品的性能、质量, 提高生产效率的;

(二) 能显著节约原材料、燃料、动力的。

Article 25 The industrial property or proprietary technologies contributed by the foreign party as investment shall meet one of the following conditions:

(1) Capable of improving markedly the performance and quality of existing products and raising productivity;

(2) Capable of notable savings in raw materials, fuel or power.

第二十六条

外国合营者以工业产权或者专有技术作为出资, 应当提交该工业产权或者专有技术的有关资料, 包括专利证书或者商标注册证书的复制件、有效状况及其技术特性、实用价值、作价的计算根据、与中国合营者签订的作价协议等有关文件, 作为合营合同的附件。

Article 26 Foreign parties who contribute industrial property or proprietary technologies as investment shall present relevant documentation on the industrial property or proprietary technologies, including photocopies of the patent certificates or trademark registration certificates, statements of validity, their technical characteristics, practical value, the basis for calculating the price and the price agreement signed with the Chinese partners. All these shall serve as an annex to the contract.

第二十七条

外国合营者作为出资的机器设备或者其他物料、工业产权或者

Article 27 The machinery, equipment or other materials, industrial property or proprietary technologies contributed by foreign parties as investment shall be subject to the examination and approval authority for approval.

专有技术，应当报审批机构批准。

第二十八条

合营各方应当按照合同规定的期限缴清各自的出资额。逾期未缴或者未缴清的，应当按合同规定支付迟延利息或者赔偿损失。

Article 28 The parties to the joint venture shall pay in full the investment subscribed according to the time limit stipulated in the contract. Delay in payment or partial delay in payment shall be subject to a payment of interest in arrears or a compensation for the loss as defined in the contract.

第二十九条

合营各方缴付出资额后，应当由中国的注册会计师验证，出具验资报告后，由合营企业据以发给出资证明书。出资证明书载明下列事项：合营企业名称；合营企业成立的年、月、日；合营者名称（或者姓名）及其出资额、出资的年、月、日；发出资证明书的年、月、日。

Article 29 After the investment is paid up by the parties to the joint venture, a Chinese registered accountant shall verify it and provide a certificate of verification, based on which the joint venture shall issue an investment certificate. An investment certificate shall include the following items: name of the joint venture; date, month and year of the establishment of the joint venture; names of the parties and the investment contributed; date, month and year of the contribution of the investment; and date, month and year of issuance of the investment certificate.

第五章 董事会与经营管理机构

Chapter 5 Board of Directors and Management Office

第三十条

董事会是合营企业的最高权力机构，决定合营企业的一切重大问题。

Article 30 The highest authority of the joint venture shall be its board of directors. It shall decide all major issues concerning the joint venture.

第三十一条

董事会成员不得少于 3 人。董事名额的分配由合营各方参照出资比例协商确定。

董事的任期为 4 年，经合营各方继续委派可以连任。

Article 31 The board of directors shall consist of no less than three (3) members. The distribution of the number of directors shall be ascertained through consultation by the parties to the joint venture with reference to the proportion of investment contributed.

The term of office for the directors is four (4) years. Their term of office may be renewed with the consent of the parties to the joint venture.

第三十二条

董事会会议每年至少召开 1 次，由董事长负责召集并主持。董事长不能召集时，由董事长委托副董事长或者其他董事负责召集并

Article 32 The board of directors shall convene at least once every year. The meeting shall be called and presided over by the chairperson of the board.

Where the chairperson is unable to call the meeting, he/she shall authorize the vice-chairperson or other director to call and preside over the meeting. The chairperson may convene an interim meeting based on a proposal made by more than

主持董事会会议。经 1/3 以上董事提议,可以由董事长召开董事会临时会议。

董事会会议应当有 2/3 以上董事出席方能举行。董事不能出席的,可以出具委托书委托他人代表其出席和表决。

董事会会议一般应当在合营企业法定地址所在地举行。

第三十三条

下列事项由出席董事会会议的董事一致通过方可作出决议:

- (一) 合营企业章程的修改;
- (二) 合营企业的中止、解散;
- (三) 合营企业注册资本的增加、减少;
- (四) 合营企业的合并、分立。

其他事项,可以根据合营企业章程载明的议事规则作出决议。

第三十四条

董事长是合营企业的法定代表人。董事长不能履行职责时,应当授权副董事长或者其他董事代表合营企业。

第三十五条

合营企业设经营管理机构,负责企业的日常经营管理工作。经

one-third of the directors.

A board meeting requires a quorum of over two-thirds of the directors. Where the director is unable to attend, he/she shall present a proxy authorizing someone else to represent him/her and vote for him/her.

A board meeting shall generally be held at the location of the joint venture's legal address.

Article 33 Decisions on the following matters shall be made only after being unanimously agreed upon by the directors present at the board meeting:

- (1) Amendment of the articles of association of the joint venture;
- (2) Termination and dissolution of the joint venture;
- (3) Increase or reduction of the registered capital of the joint venture;
- (4) Merger or division of the joint venture.

Decisions on other matters shall be made according to the rules of procedure stipulated in the articles of association.

Article 34 The chairperson of the board is the legal representative of the joint venture. Where the chairperson is unable to exercise his/her responsibilities, he/she shall authorize the vice-chairperson of the board or other director to represent the joint venture.

Article 35 A joint venture shall establish a business management office which shall be responsible for daily business management. The business management office shall have a general manager and several deputy general managers who shall assist the general manager in his/her work.

营管理机构设总经理 1 人，副总经理若干人。副总经理协助总经理工作。

第三十六条

总经理执行董事会会议的各项决议，组织领导合营企业的日常经营管理工作。在董事会授权范围内，总经理对外代表合营企业，对内任免下属人员，行使董事会授予的其他职权。

第三十七条

总经理、副总经理由合营企业董事会聘请，可以由中国公民担任，也可以由外国公民担任。

经董事会聘请，董事长、副董事长、董事可以兼任合营企业的总经理、副总经理或者其他高级管理职务。

总经理处理重要问题时，应当同副总经理协商。

总经理或者副总经理不得兼任其他经济组织的总经理或者副总经理，不得参与其他经济组织对本企业的商业竞争。

第三十八条

总经理、副总经理及其他高级管理人员有营私舞弊或者严重失职行为的，经董事会决议可以随时解聘。

第三十九条

合营企业需要在外国和港澳

Article 36 The general manager shall carry out the decisions of the board meeting, organize and be responsible for the daily management of the joint venture. The general manager shall, within his/her authority empowered by the board, represent the joint venture externally, and shall have the right to appoint and dismiss his/her subordinates, and exercise other responsibilities and power as authorized by the board within the joint venture.

Article 37 The general manager and deputy general managers shall be appointed by the board of directors of the joint venture. These positions may be held either by Chinese citizens or foreign citizens.

At the invitation of the board of directors, the chairperson, vice-chairperson or other directors of the board may concurrently be the general manager, deputy general managers or other senior management personnel of the joint venture.

In handling major issues, the general manager shall consult with the deputy general managers.

The general manager or deputy general managers shall not hold posts concurrently as general manager or deputy general managers of other economic organizations. They shall not have any connections with other economic organizations in commercial competition with their own joint venture.

Article 38 Where the general manager, deputy general managers or other senior management personnel practice favoritism or seriously abuse their power, the board of directors shall have the power to dismiss them at any time.

Article 39 Where a joint venture needs to establish branch offices (including sales offices) outside China or in Hong Kong or Macao, it must report to the Ministry of Foreign Trade and Economic Cooperation for approval.

地区设立分支机构（含销售机构）时，应当报对外贸易经济合作部批准。

第六章 引进技术

Chapter 6 Introduction of Technology

第四十条

Article 40 The introduction of technology mentioned in this chapter refers to the necessary technology obtained by the joint venture by means of technology transfer from a third party or parties to the joint venture.

本条例所称引进技术，是指合营企业通过技术转让的方式，从第三者或者合营者获得所需要的技术。

第四十一条

Article 41 The technology acquired by the joint venture shall be appropriate and advanced and enable the venture's products to display conspicuous social and economic results domestically or to be competitive on the international market.

合营企业引进的技术应当是适用的、先进的，使其产品在国内具有显著的社会经济效益或者在国际市场上具有竞争能力。

第四十二条

Article 42 The right of the joint venture to do business independently shall be maintained when making technology transfer agreements, and relevant documentation shall be provided by the technology exporting party in accordance with the provisions of Article 26 of these Regulations.

在订立技术转让协议时，必须维护合营企业独立进行经营管理的权利，并参照本条例第二十六条的规定，要求技术输出方提供有关的资料。

第四十三条

Article 43 The technology transfer agreements signed by a joint venture shall be submitted for approval to the examination and approval authority.

合营企业订立的技术转让协议，应当报审批机构批准。

Technology transfer agreements shall comply with the following stipulations:

技术转让协议必须符合下列规定：

(1) The fees for use of technology shall be fair and reasonable;

（一）技术使用费应当公平合理；

(2) Unless otherwise agreed upon by both parties, the technology exporting party shall not put any restrictions on the quantity, price or region of sale of the products that are to be exported by the technology importing party;

（二）除双方另有协议外，技术输出方不得限制技术输入方出口其产品的地区、数量和价格；

(3) The term for a technology transfer agreement is generally no longer than ten years;

(4) After the expiry of a technology transfer agreement, the technology importing party shall have the right to use the

(三) 技术转让协议的期限一般不超过 10 年;	technology continuously;
(四) 技术转让协议期满后, 技术输入方有权继续使用该项技术;	(5) Conditions for mutual exchange of information on the improvement of technology by both parties of the technology transfer agreement shall be reciprocal; (6) The technology importing party shall have the right to buy the equipment, parts and raw materials needed from sources they deem suitable;
(五) 订立技术转让协议双方, 相互交换改进技术的条件应当对等;	(7) No unreasonably restrictive clauses prohibited by the Chinese law and regulations shall be included.
(六) 技术输入方有权按自己认为合适的来源购买需要的机器设备、零部件和原材料;	
(七) 不得含有为中国的法律、法规所禁止的不合理的限制性条款。	

第七章 场地使用权及其费用

Chapter 7 Right to the Use of Site and Its Fee

第四十四条

合营企业使用场地, 必须贯彻执行节约用地的原则。所需场地, 应当由合营企业向所在地的市(县)级土地主管部门提出申请, 经审查批准后, 通过签订合同取得场地使用权。合同应当订明场地面积、地点、用途、合同期限、场地使用权的费用(以下简称场地使用费)、双方的权利与义务、违反合同的罚则等。

Article 44 Joint ventures shall implement the principle of efficiency in the use of land. Any joint venture requiring the use of a site shall file an application with local departments of the municipal (county) government in charge of land and obtain the right to use a site only after securing approval and signing a contract. The size, location, purpose and contract period and fee for the right to use a site (hereinafter referred to as site use fee), rights and obligations of the parties to a joint venture and fines for breach of contract should be stipulated in explicit terms in the contract.

第四十五条

合营企业所需场地的使用权, 已为中国合营者所拥有的, 中国合营者可以将其作为对合营企业的出资, 其作价金额应当与取得同类场地使用权所应缴纳的使用

Article 45 If the Chinese party already has the right to the use of site for the joint venture, the Chinese party may use it as part of its investment. The monetary equivalent of this investment should be the same as the site use fee otherwise paid for acquiring such site.

费相同。

第四十六条

场地使用费标准应当根据该场地的用途、地理环境条件、征地拆迁安置费用和合营企业对基础设施的要求等因素，由所在地的省、自治区、直辖市人民政府规定，并向对外贸易经济合作部和国家土地主管部门备案。

Article 46 The standard for a site use fee shall be stipulated by the people's government of a province, autonomous region or centrally administered municipality where the joint venture is located according to such factors as the purpose of use, geographic and environmental conditions, expenses for requisition, demolishing and resettlement and the joint venture's requirements with regard to infrastructure, and shall be filed with the Ministry of Foreign Trade and Economic Cooperation and the state department responsible for land administration.

第四十七条

从事农业、畜牧业的合营企业，经所在地的省、自治区、直辖市人民政府同意，可以按合营企业营业收入的百分比向所在地的土地主管部门缴纳场地使用费。

Article 47 Joint ventures engaged in agriculture and animal husbandry may, with the consent of the people's government of the local province, autonomous region or centrally administered municipality, pay a percentage of the joint venture's business income as site use fees to the local department responsible for land administration.

在经济不发达地区从事开发性的项目，场地使用费经所在地人民政府同意，可以给予特别优惠。

Projects of a developmental nature in economically undeveloped areas may receive special preferential treatment in respect of site use fees with the consent of the local people's government.

第四十八条

场地使用费在开始用地的 5 年内不调整。以后随着经济的发展、供需情况的变化和地理环境条件的变化需要调整时，调整的间隔期应当不少于 3 年。

Article 48 The rates for site use fees shall not be subject to adjustment in the first five (5) years beginning from the day the land is used. After that the interval of adjustment shall not be less than three (3) years according to the development and changes in geographic and environmental conditions.

场地使用费作为中国合营者投资的，在该合同期限内不得调整。

Site use fees as part of the investment by the Chinese party shall not be subject to adjustment during the contract period.

第四十九条

合营企业按本条例第四十四条取得的场地使用权，其场地使用费应当按合同规定的用地时间从开始时起按年缴纳，第一日历年用

Article 49 The fee for the right to the use of site obtained by a joint venture according to Article 44 of these Regulations shall be paid annually from the day to begin use of the land stipulated in the contract. For the first calendar year, the venture shall pay a half-year fee if it has used the land for over six months; if less than six months, the site use fee shall be exempt. During the contract period, if the rates of site use fees are adjusted, the joint venture shall pay it according to the new rates from the year of adjustment.

地时间超过半年的按半年计算;不足半年的免缴。在合同期内,场地使用费如有调整,应当自调整的年度起按新的费用标准缴纳。

第五十条

合营企业除依照本章规定取得场地使用权外,还可以按照国家有关规定取得场地使用权。

Article 50 Joint ventures, in addition to obtaining site use right according to the provisions of this chapter, may also acquire site use right in accordance with relevant provisions of the State.

第八章 购买与销售

Chapter 8 Purchasing and Selling

第五十一条

合营企业所需的机器设备、原材料、燃料、配套件、运输工具和办公用品等(以下简称物资),有权自行决定在中国购买或者向国外购买。

Article 51 In its purchase of required machinery, equipment, raw materials, fuel, parts, means of transport and items for office use, etc. (hereinafter referred to as materials), a joint venture has the right to decide whether to buy them in China or from abroad.

第五十二条

合营企业需要在中国购置的办公、生活用品,按需要量购买,不受限制。

Article 52 The amount of materials needed for office and daily life for joint ventures purchased in China is not subject to restriction.

第五十三条

中国政府鼓励合营企业向国际市场销售其产品。

Article 53 The Chinese Government encourages joint ventures to sell their products on the international market.

第五十四条

合营企业有权自行出口其产品,也可以委托外国合营者的销售机构或者中国的外贸公司代销或者经销。

Article 54 A joint venture has the right to export its products by itself or entrust sales agencies of the foreign party or Chinese foreign trade corporations with sales on a commission or distribution basis.

第五十五条

合营企业在合营合同规定的经营范围内,进口本企业生产所需的机器设备、零配件、原材料、燃

Article 55 Within the scope of operations stipulated in the contract, a joint venture may import machinery, equipment, parts, raw materials and fuel needed for its production. A joint venture shall make a plan every year for items for which import licenses are required by state regulations, and apply for them every six months. For machinery, equipment and other objects which a foreign party has contributed as part of its investment, the foreign party can apply directly for import licenses with

料,凡属国家规定需要领取进口许可证的,每年编制一次计划,每半年申领一次。外国合营者作为出资的机器设备或者其他物料,可以凭审批机构的批准文件直接办理进口许可证进口。超出合营合同规定范围进口的物资,凡国家规定需要领取进口许可证的,应当另行申领。

合营企业生产的产品,可以自主经营出口,凡属国家规定需要领取出口许可证的,合营企业按照本企业的年度出口计划,每半年申领一次。

第五十六条

合营企业在国内购买物资的价格以及支付水、电、气、热、货物运输、劳务、工程设计、咨询、广告等服务的费用,享受与国内其他企业同等的待遇。

documents approved by the examination and approval authority. For materials to be imported exceeding the stipulated scope of the contracts, separate application for import licenses according to state regulations is required.

A joint venture has the right to export its products by itself; for those products for which export licenses are required by state regulations, the joint venture shall apply for them every six months on the basis of its annual export plan.

Article 56 With respect to prices for materials in China and fees charged for services such as water, electricity, gas, heat, transportation of goods, labor, engineering design, consultation, advertisements, joint ventures shall be treated equally with other domestic enterprises.

第五十七条

合营企业与中国其他经济组织之间的经济往来,按照有关的法律规定和双方订立的合同承担经济责任,解决合同争议。

Article 57 A joint venture and other Chinese economic organizations shall, in their economic exchanges, undertake economic responsibilities and settle disputes over contracts in accordance with the relevant laws and the contract concluded between both parties.

第五十八条

合营企业应当依照《中华人民共和国统计法》及中国利用外资统计制度的规定,提供统计资料,报送统计报表。

Article 58 A joint venture shall provide statistic data and submit statistic forms in accordance with the Law of the People's Republic of China on Statistics and other state provisions on the statistics collection in relation to the utilization of foreign investment.

第九章 税 务

Chapter 9 Taxes

第五十九条

合营企业应当按照中华人民

Article 59 Joint ventures shall pay taxes according to the stipulations of relevant laws of the People's Republic of China.

共和国有关法律的规定,缴纳各种税款。

第六十条

合营企业的职工应当按照《中华人民共和国个人所得税法》缴纳个人所得税。

Article 60 Staff members and workers employed by joint ventures shall pay individual income tax according to the Individual Income Tax Law of the People's Republic of China.

第六十一条

合营企业进口下列物资,依照中国税法的有关规定减税、免税:

(一) 按照合同规定作为外国合营者出资的机器设备、零部件和其他物料(其他物料系指合营企业建厂(场)以及安装、加固机器所需材料,下同);

(二) 合营企业以投资总额以内的资金进口的机器设备、零部件和其他物料;

(三) 经审批机构批准,合营企业以增加资本所进口的国内不能保证生产供应的机器设备、零部件和其他物料;

(四) 合营企业为生产出口产品,从国外进口的原材料、辅料、元器件、零部件和包装物料。

上述减税、免税进口物资,经批准在中国国内转卖或者转用于在中国国内销售的产品,应当依照章纳税或者补税。

Article 61 Taxes on the following imports by a joint venture shall be reduced or exempted in accordance with the relevant provisions of the Chinese tax law:

(1) Machinery, equipment, parts and other materials ("other materials" here and hereinafter mean required materials for the joint venture's construction on the factory site and for the installation and reinforcement of machines,) which are part of the foreign party's share of investment according to the provisions of contract;

(2) Machinery, equipment, parts and other materials imported with funds which are part of the joint venture's total investment;

(3) Machinery, equipment, parts and other materials imported by the joint venture with additional capital under the approval of the examination and approval authority, and for which China cannot guarantee production and supply;

(4) Raw materials, auxiliary materials, components, parts and packaging materials imported by the joint venture for production of export goods.

Taxes shall be paid or added according to regulations when the above-mentioned duty-free materials are approved for sale inside China or used for the production of items to be sold on the Chinese domestic market.

第六十二条

合营企业生产的出口产品,

Article 62 Except for those export items restricted by the State, taxes on export products of a joint venture shall be reduced, exempted or refunded in accordance with the relevant provisions of the Chinese tax law.

除中国限制出口的以外,依照中国税法的有关规定减税、免税或者退税。

第十章 外汇管理

Chapter 10 Foreign Exchange Control

第六十三条

Article 63 All matters concerning foreign exchange for joint ventures shall be handled according to the Rules of the People's Republic of China on Foreign Exchange Control and relevant provisions of administrative measures.

合营企业的一切外汇事宜,按照《中华人民共和国外汇管理条例》和有关管理办法的规定办理。

第六十四条

Article 64 With a business license, a joint venture may open foreign exchange accounts and Renminbi accounts with banks inside China. The bank handling the accounts of the joint venture shall exercise supervision of receipts and expenditures.

合营企业凭营业执照,在境内银行开立外汇账户和人民币账户,由开户银行监督收付。

第六十五条

Article 65 A joint venture shall obtain permission from the State Administration of Foreign Exchange or one of its branches to open a foreign exchange deposit account with an overseas bank or one in Hong Kong or Macao, and report to the State Administration of Foreign Exchange or one of its branches its foreign exchange receipts and expenditures, and provide account balance sheets.

合营企业在国外或者港澳地区的银行开立外汇账户,应当经国家外汇管理局或者其分局批准,并向国家外汇管理局或者其分局报告收付情况和提供银行对账单。

第六十六条

Article 66 Branches and divisions set up by a joint venture in foreign countries or in Hong Kong or Macao shall submit its annual statement of assets and liabilities and annual profit report to the State Administration of Foreign Exchange or one of its branches through the joint venture.

合营企业在国外或者港澳地区设立的分支机构,其年度资产负债表和年度利润表,应当通过合营企业报送国家外汇管理局或者其分局。

第六十七条

Article 67 A joint venture may, in accordance with its operation needs, apply to a financial institution inside China for foreign exchange loans and Renminbi loans. It may also borrow foreign exchange from banks abroad or in Hong Kong or Macao in accordance with the relevant provisions of the State, and carry out procedures for registration or filing for record with the State Administration of Foreign Exchange or one of its branches.

合营企业根据经营业务的需要,可以向境内的金融机构申请外汇贷款和人民币贷款,也可以按照国家有关规定从国外或者港澳地区的银行借入外汇资金,并向国家外汇管理局或者其分局办理登记或者备案手续。

第六十八条

合营企业的外籍职工和港澳职工的工资和其他正当收益,依法纳税后,减去在中国境内的花费,其剩余部分可以按照国家有关规定购汇汇出。

Article 68 After foreign staff and workers and staff and workers from Hong Kong and Macao have paid income tax on their salaries and other legitimate incomes in accordance with the law, they may remit outside China the remaining foreign exchange after deduction of their living expenses in China, in accordance with relevant provisions of the State.

第十一章 财务与会计

Chapter 11 Financial Affairs and Accounting

第六十九条

合营企业的财务与会计制度,应当按照中国有关法律和财务会计制度的规定,结合合营企业的情况加以制定,并报当地财政部门、税务机关备案。

Article 69 Procedures for handling financial affairs and accounting of a joint venture shall be formulated in accordance with China's relevant laws and procedures on financial affairs and accounting, and in consideration of the conditions of the joint venture, and then be filed with local financial departments and tax authorities for the record.

第七十条

合营企业设总会计师,协助总经理负责企业的财务会计工作。必要时,可以设副总会计师。

Article 70 A joint venture shall employ a chief accountant to assist the general manager in handling the financial affairs of the enterprise. If necessary a deputy chief accountant may also be appointed.

第七十一条

合营企业设审计师(小的企业可以不设),负责审查、稽核合营企业的财务收支和会计账目,向董事会、总经理提出报告。

Article 71 A joint venture shall (a small venture need not) appoint an auditor to be responsible for checking financial receipts, payments and accounts, and to submit reports to the board of directors and the general manager.

第七十二条

合营企业会计年度采用日历年制,自公历每年1月1日起至12月31日止为一个会计年度。

Article 72 The fiscal year of a joint venture shall coincide with the calendar year, i.e. from January 1 to December 31 on the Gregorian calendar.

第七十三条

合营企业会计采用国际通用的权责发生制和借贷记账法记账。一切自制凭证、账簿、报表必须用中文书写,也可以同时用合营各方商定的一种外文书写。

Article 73 The accounting of a joint venture shall adopt the internationally accepted accrual basis and debit and credit accounting system in their work. All vouchers, account books, statistical statements and reports prepared by the enterprise shall be written in Chinese. A foreign language may also be used concurrently with mutual consent.



第七十四条

合营企业原则上采用人民币作为记账本位币, 经合营各方商定, 也可以采用某一种外国货币作为记账本位币。

Article 74 In principal, a joint venture shall adopt Renminbi as the standard currency. In keeping accounts, however, another currency may also be used through consultation by the parties concerned.

第七十五条

合营企业的账目, 除按记账本位币记录外, 对于现金、银行存款、其他货币款项以及债权债务、收益和费用等, 与记账本位币不一致时, 还应当按实际收付的货币记账。

以外国货币作为记账本位币的合营企业, 其编报的财务会计报告应当折算为人民币。

因汇率的差异而发生的折合记账本位币差额, 作为汇兑损益列账。记账汇率变动, 有关外币各账户的账面余额, 于年终结账时, 应当按照中国有关法律和财务会计制度的规定进行会计处理。

Article 75 In addition to the use of standard currency to record accounts, joint ventures shall record accounts in currencies actually used in payments and receipts, if such currencies in cash, bank deposits, funds of other currencies, creditor's rights, debts, gains, expenses, etc. are inconsistent with the standard currency in recording accounts.

Where foreign currency is used as the standard currency in accounting, the joint venture shall convert the said currency into Renminbi in its financial accounting reports.

Where funds are converted to the currency of a particular account, the difference caused by differing exchange rates shall be recorded as profit or loss on exchange. Recorded fluctuations in exchange rates and the book amounts of the various related foreign currency accounts shall undergo accounting treatment during the year-end closure of accounts in accordance with China's relevant laws and its financial accounting system.

第七十六条

合营企业按照《中华人民共和国企业所得税法》缴纳所得税后的利润分配原则如下:

(一) 提取储备基金、职工奖励及福利基金、企业发展基金, 提取比例由董事会确定;

(二) 储备基金除用于弥补合营企业亏损外, 经审批机构批准也可以用于本企业增加资本, 扩大

Article 76 Principles of profit distribution after payment of taxes in accordance with the Corporate Income Tax Law of the People's Republic of China are as follows:

(1) Allocations for reserve funds, bonuses and welfare funds for staff and workers and development funds of the joint venture and the proportion of allocations are decided by the board of directors;

(2) Reserve funds can be used to make up the losses of the joint venture, and with the consent of the examination and approval authority, can also be used to increase the joint venture's capital for production expansion;

(3) After the funds described in (1) of this Article have been deducted, if the board of directors decides to distribute the remaining profit, it should be distributed according to the proportion of each party's investment.

生产;

(三) 按照本条第(一)项规定提取三项基金后的可分配利润, 董事会确定分配的, 应当按合营各方的出资比例进行分配。

第七十七条

以前年度的亏损未弥补前不得分配利润。以前年度未分配的利润, 可以并入本年度利润分配。

Article 77 Profits cannot be distributed unless the losses of previous years have been made up. Remaining profits from the previous year (or years) can be distributed together with the profit of the current year.

第七十八条

合营企业应当向合营各方、当地税务机关和财政部门报送季度和年度会计报表。

Article 78 A joint venture shall submit quarterly and annual financial reports to the parties to the joint venture, the local tax authority and the financial department.

第七十九条

合营企业的下列文件、证件、报表, 应当经中国的注册会计师验证和出具证明, 方为有效:

(一) 合营各方的出资证明书(以物料、场地使用权、工业产权、专有技术作为出资的, 应当包括合营各方签字同意的财产估价清单及其协议文件);

(二) 合营企业的年度会计报表;

(三) 合营企业清算的会计报表。

Article 79 Only after being examined and certified by an accountant registered in China can the following documents, certificates and reports be considered valid:

- (1) Certificates of investment from all parties to a joint venture (lists of assessed value and agreements signed by parties to the joint venture shall be attached, where involving the use of materials, site use rights, industrial property and proprietary technologies as contributions);
- (2) Annual financial reports of the joint venture;
- (3) Financial reports on liquidation of the joint venture.

第十二章 职工

Chapter 12 Staff and Workers

第八十条

合营企业职工招收、招聘、辞退、辞职、工资、福利、劳动保

Article 80 The employment, recruitment, dismissal and resignation of staff and workers of joint ventures, and their salary, welfare benefits, labor insurance, labor protection, labor discipline and other matters shall be handled according to the relevant provisions of the State on labor and social security.

险、劳动保护、劳动纪律等事宜，按照国家有关劳动和社会保障的规定办理。

第八十一条

合营企业应当加强对职工的业务、技术培训，建立严格的考核制度，使他们在生产、管理技能方面能够适应现代化企业的要求。

Article 81 Joint ventures shall make efforts to conduct professional and technical training of their staff and workers and establish a strict examination system so that they can meet the requirements of production and managerial skills in a modernized enterprise.

第八十二条

合营企业的工资、奖励制度必须符合按劳分配、多劳多得的原则。

Article 82 The salary and bonus systems of joint ventures shall be in accordance with the principle of distribution to each according to his work, and more pay for more work.

第八十三条

正副总经理、正副总工程师、正副总会计师、审计师等高级管理人员的工资待遇，由董事会决定。

Article 83 Salaries and remuneration of the general manager, deputy general manager(s), chief engineer, deputy chief engineer(s), chief accountant and deputy chief accountant(s), auditor(s) and other senior officials shall be decided upon by the board of directors.

第十三章 工 会

Chapter 13 Trade Unions

第八十四条

合营企业职工有权按照《中华人民共和国工会法》和《中国工会章程》的规定，建立基层工会组织，开展工会活动。

Article 84 Staff and workers of a joint venture have the right to set up a grass-roots trade union and carry on trade union activities in accordance with the Trade Union Law of the People's Republic of China (hereinafter referred to as Chinese Trade Union Law) and the Articles of Association of Chinese Trade Unions.

第八十五条

合营企业工会是职工利益的代表，有权代表职工同合营企业签订劳动合同，并监督合同的执行。

Article 85 Trade unions in joint ventures are representatives of the interests of the staff and workers. They have the power to represent the staff and workers to sign labor contracts with joint ventures and supervise the execution of these contracts.

第八十六条

合营企业工会的基本任务是：依法维护职工的民主权利和物质利益；协助合营企业安排和合理使用福利、奖励基金；组织职工学

Article 86 The basic tasks of the trade unions in joint ventures are: to protect the democratic rights and material interests of the staff and workers in accordance with the law; to help the joint ventures with the arrangement and rational use of welfare and bonus funds; to organize political, professional, scientific and technical studies, carry out literary, artistic and sporting activities; and to educate staff workers to observe labor discipline and strive to fulfill the economic tasks of the enterprises.

习政治、科学、技术和业务知识，开展文艺、体育活动；教育职工遵守劳动纪律，努力完成企业的各项经济任务。

第八十七条

合营企业董事会会议讨论合营企业的发展规划、生产经营活动等重大事项时，工会的代表有权列席会议，反映职工的意见和要求。

董事会会议研究决定有关职工奖惩、工资制度、生活福利、劳动保护和保险等问题时，工会的代表有权列席会议，董事会应当听取工会的意见，取得工会的合作。

Article 87 Trade union representatives have the right to attend as non-voting members and to report the opinions and demands of staff and workers to meetings of the board of directors held to discuss important issues such as development plans, production and operational activities of joint ventures.

Trade union representatives have the right to attend as non-voting members meetings of the board of directors held to discuss and decide on awards and penalties to staff and workers, salary systems, welfare benefits, labor protection and labor insurance, etc. The board of directors shall heed the opinions of the trade union and win its co-operation.

第八十八条

合营企业应当积极支持本企业工会的工作。合营企业应当按照《中华人民共和国工会法》的规定为工会组织提供必要的房屋和设备，用于办公、会议、举办职工集体福利、文化、体育事业。合营企业每月按企业职工实际工资总额的 2% 拨交工会经费，由本企业工会按照中华全国总工会制定的有关工会经费管理办法使用。

Article 88 A joint venture shall actively support the work of the trade union, and, in accordance with stipulations of the Chinese Trade Union Law, provide housing and facilities for the trade union's office work, meetings, and welfare, cultural and sports activities. The joint venture shall allot an amount of money totaling two percent of all salaries of the joint venture's staff and workers as trade union's funds, which the trade union of the joint venture shall use according to the relevant managerial rules for trade union funds formulated by the All China Federation of Trade Unions.

第十四章 期限、解散与清算

Chapter 14 Duration, Dissolution and Liquidation

第八十九条

合营企业的合营期限，按照《中外合资经营企业合营期限暂行规定》执行。

Article 89 The duration of a joint venture shall be determined in accordance with the Provisional Regulations on the Duration of Sino-foreign Equity Joint Enterprises.

第九十条

合营企业在下列情况下解

Article 90 A joint venture may be dissolved in the following situations:

(1) Expiry of duration;

散：	(2) Inability to continue operations due to heavy losses;
(一) 合营期限届满；	(3) Inability to continue operations due to the failure of one of the contracting parties to fulfill the obligations prescribed by the agreement, contract or articles of association;
(二) 企业发生严重亏损，无力继续经营；	(4) Inability to continue operations due to heavy losses caused by force majeure such as natural calamities and wars, etc.;
(三) 合营一方不履行合营企业协议、合同、章程规定的义务，致使企业无法继续经营；	(5) Inability to obtain the desired objectives of the operation and at the same time to see a future for development;
(四) 因自然灾害、战争等不可抗力遭受严重损失，无法继续经营；	(6) Occurrence of other reasons for dissolution prescribed by the contract and articles of association.
(五) 合营企业未达到其经营目的，同时又无发展前途；	In cases described in (2), (4), (5) and (6) of the preceding paragraph, the board of directors shall make an application for dissolution to the examination and approval authority for approval; in situation described in (3), the party that performs the contract shall make an application and report it to the examination and approval authority for approval.
(六) 合营企业合同、章程所规定的其他解散原因已经出现。	In the situation described in (3) of this article, the party which failed to fulfill the obligations prescribed by the agreement, contract and articles of association shall be liable for compensation for the losses thus caused.
前款第(二)、(四)、(五)、(六)项情况发生的，由董事会提出解散申请书，报审批机构批准；第(三)项情况发生的，由履行合同的一方提出申请，报审批机构批准。	
在本条第一款第(三)项情况下，不履行合营企业协议、合同、章程规定的义务一方，应当对合营企业由此造成的损失负赔偿责任。	

第九十一条

合营企业宣告解散时，应当进行清算。合营企业应当依法成立清算委员会，由清算委员会负责清算事宜。

Article 91 A joint venture announcing its dissolution must undergo liquidation procedures. The joint venture must form a liquidation committee in accordance with the law. The liquidation committee is in charge of the liquidation affairs.

第九十二条

Article 92 Members of a liquidation committee are usually selected from among directors of a joint venture. In case the

清算委员会的成员一般应当在合营企业的董事中选任。董事不能担任或者不适合担任清算委员会成员时,合营企业可以聘请中国的注册会计师、律师担任。审批机构认为必要时,可以派人进行监督。

清算费用和清算委员会成员的酬劳应当从合营企业现存财产中优先支付。

第九十三条

清算委员会的任务是对合营企业的财产、债权、债务进行全面清查,编制资产负债表和财产目录,提出财产作价和计算依据,制定清算方案,提请董事会会议通过后执行。

清算期间,清算委员会代表该合营企业起诉和应诉。

第九十四条

合营企业以其全部资产对其债务承担责任。合营企业清偿债务后的剩余财产按照合营各方的出资比例进行分配,但合营企业协议、合同、章程另有规定的除外。

合营企业解散时,其资产净额或者剩余财产减除企业未分配利润、各项基金和清算费用后的余额,超过实缴资本的部分为清算所得,应当依法缴纳所得税。

第九十五条

合营企业的清算工作结束

directors cannot serve or are unsuitable to be members of the liquidation committee, the joint venture may appoint accountants and lawyers registered in China to the committee. When the examination and approval authority deems it necessary, it may appoint personnel to supervise the process.

The liquidation expenses and remuneration to members of the liquidation committee shall be paid in priority from the existing assets of the joint venture.

Article 93 The tasks of the liquidation committee are: to conduct a thorough check of the property of the joint venture concerned, its creditors' rights and liabilities; to work out the statement of assets and liabilities and a list of property; to put forward a basis on which property is to be evaluated and calculated; and to formulate a liquidation plan. All these shall be carried out upon approval of the board of directors.

During the process of liquidation, the liquidation committee shall represent the joint venture concerned in litigation.

Article 94 A joint venture shall be liable to its debts with all of its assets. The remaining property after the clearance of debts shall be distributed among parties to the joint venture according to the proportion of each party's investment unless otherwise provided by agreement, contract and articles of association of the joint venture.

At the time when a joint venture is being dissolved, its net assets or the residual amount of the remaining property subtracting the undistributed profits, various funds and liquidation expenses, that exceeds the actually paid up capital shall be regarded as income derived from liquidation, and income tax shall be levied according to law.

Article 95 On completion of the liquidation of a dissolved joint venture, the liquidation committee shall submit a liquidation report approved by a meeting of the board of directors to the original examination and approval authority, go through

后,由清算委员会提出清算结束报告,提请董事会会议通过后,报告审批机构,并向登记管理机构办理注销登记手续,缴销营业执照。

第九十六条

合营企业解散后,各项账册及文件应当由原中国合营者保存。

第十五章 争议的解决

第九十七条

合营各方在解释或者履行合营企业协议、合同、章程时发生争议的,应当尽量通过友好协商或者调解解决。经过协商或者调解无效的,提请仲裁或者司法解决。

第九十八条

合营各方根据有关仲裁的书面协议,可以在中国的仲裁机构进行仲裁,也可以在其他仲裁机构仲裁。

第九十九条

合营各方之间没有有关仲裁的书面协议的,发生争议的任何一方都可以依法向人民法院起诉。

第一百条

在解决争议期间,除争议事项外,合营各方应当继续履行合营企业协议、合同、章程所规定的其他各项条款。

第十六章 附 则

第一百零一条

合营企业的外籍职工和港澳

formalities for cancelling its registration and hand in its business license to the original registration authority.

Article 96 After dissolution of a joint venture, its account books and documents shall be left in the care of the Chinese party.

Chapter 15 Settlement of Disputes

Article 97 Disputes arising over the interpretation or execution of the agreement, contract or articles of association between the parties to the joint venture shall, if possible, be settled through friendly consultation or mediation. Disputes that cannot be settled through these means may be settled through arbitration or judicial means.

Article 98 Parties to a joint venture may apply for arbitration in a Chinese arbitration institution or another arbitration institution in accordance with the relevant written arbitration agreement.

Article 99 If there is no written arbitration agreement between the parties to a joint venture, each side may file a suit with a Chinese people's court.

Article 100 During the process of solving disputes, except for matters in dispute, parties to a joint venture shall continue to carry out other provisions stipulated by the agreement, contract and articles of association of the joint venture.

Chapter 16 Supplementary Provisions

Article 101 The Chinese office in charge of visas shall give convenient service by simplifying procedures for staff and workers from foreign countries or from Hong Kong and Macao (including their family members) who frequently cross Chinese borders.

职工(包括其家属),需要经常入、出中国国境的,中国主管签证机关可以简化手续,予以方便。

第一百零二条

合营企业的中国职工,因工作需要出国(境)考察、洽谈业务、学习或者接受培训,按照国家有关规定办理出国(境)手续。

Article 102 Chinese staff and workers in a joint venture who go abroad for study tours, business negotiations or training shall carry out procedures for exiting country (border) in accordance with relevant provisions of the State.

第一百零三条

合营企业的外籍职工和港澳职工,可以带进必需的交通工具和办公用品,按照中国税法的有关规定纳税。

Article 103 Staff and workers from foreign countries or from Hong Kong and Macao working for a joint venture may bring in needed means of transport and items for office use. They shall pay taxes in accordance with the relevant provisions of Chinese tax law.

第一百零四条

在经济特区设立的合营企业,法律、行政法规另有规定的,从其规定。

Article 104 Joint ventures set up in the Special Economic Zones shall abide by these provisions, unless laws and administrative regulations stipulate otherwise.

第一百零五条

本条例自公布之日起施行。

Article 105 These Regulations shall come into force on the day of promulgation.



扫一扫,手机阅读更方便